

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN THOMAS ENTLER,

Plaintiff,

vs.

CC3 MCKENNEY and H. SNIVELY,

Defendants.

NO. CV-06-5006-MWL

ORDER DENYING MOTION AND DIRECTING
PLAINTIFF TO FILE AN AMENDED
COMPLAINT WITHIN THIRTY (30) DAYS

BEFORE THE COURT is Plaintiff's Motion to Vacate Order Entered March 27, 2006, and for Order Directing Service of Complaint (Ct. Rec. 12), which the court construes as a Motion for Revision under Fed. R. Civ. P. 54. Plaintiff is proceeding *pro se* and *in forma pauperis*. The court has not directed that Defendants be served in this action.

Although Plaintiff brings his motion ostensibly under Fed. R. Civ. P. 60(b), there has been no final judgment entered in this action. Therefore, the appropriate basis for reviewing Plaintiff's allegations is a request for revision under Fed. R. Civ. P. 54(b). The motion was heard without oral argument on the date signed below. After review of Plaintiff's motion and for the reasons set forth below, **IT IS ORDERED** Plaintiff's motion (Ct. Rec. 12) is **DENIED**.

Plaintiff admits he has not exhausted any claims which arose after January 5, 2006. Regardless what such claims could establish,

1 the court cannot consider them in this action as they have not been
2 exhausted. 42 U.S.C. § 1997e(a). Therefore, Plaintiff should remove
3 these claims from his amended complaint. Plaintiff is free to bring
4 such claims in a separate action once they have been exhausted through
5 the prison grievance system.

6 At this time, the complaint has not been dismissed. Rather,
7 Plaintiff has been directed to amend his complaint to state non-
8 conclusory allegations of retaliation. Plaintiff is correct to
9 reference *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005),
10 and should present adequate facts to satisfy the five basic elements
11 of a First Amendment retaliation claim in an amended complaint.

12 Therefore, the court declines Plaintiff's request to serve the
13 present complaint and directs Mr. Entler to file an amended complaint
14 within thirty (30) days of the date of this Order, setting forth facts
15 to support his claims of retaliation.

16 **IT IS SO ORDERED.** The District Court Executive is directed to
17 enter this Order, forward a copy to Plaintiff, and set a case
18 management deadline accordingly.

19 **DATED** this 17th day of May 2006.

20
21 S/Michael W. Leavitt
22 MICHAEL W. LEAVITT
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27